

## The Honorable Benjamin H. Settle

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

## LUMENTUM OPERATIONS LLC,

Plaintiff,

V.

NLIGHT, INC.; DAHV KLINER; and  
ROGER L. FARROW,

## Defendants.

CASE NO. 3:22-CV-05186-BHS

## **STIPULATED PROTECTIVE ORDER**

NLIGHT, INC.; DAHV KLINER; and  
ROGER L. FARROW,

## Defendants.

## 1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties—plaintiff Lumentum Operations LLC (“Lumentum”) and defendants nLIGHT, Inc. (“nLIGHT”), Dahv Kliner and Roger L. Farrow—hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or

1 items that are entitled to confidential treatment under the applicable legal principles, and it does  
2 not presumptively entitle parties to file confidential information under seal.

3 2. **“CONFIDENTIAL” MATERIAL**

4 “Confidential” material shall include the following documents and tangible things  
5 produced or otherwise exchanged:

- 6 i. Documents and tangible things concerning inventory;
- 7 ii. Documents concerning employment, including employment agreements;
- 8 iii. Lumentum’s internal communications, to the extent not “ATTORNEYS’ EYES  
9 ONLY” material;
- 10 iv. nLIGHT’s internal communications, to the extent not “ATTORNEYS’ EYES  
11 ONLY” material; and
- 12 v. Documents and tangible things designated as confidential in any prior litigation  
13 and/or action.

14 3. **“ATTORNEYS’ EYES ONLY” MATERIAL**

15 “Attorneys’ Eyes Only” material shall include the following documents and tangible things  
16 produced or otherwise exchanged:

- 17 i. Documents and tangible things concerning sales, profits, losses, income,  
18 expenditures, costs, or other non-public financial information;
- 19 ii. Documents and tangible things concerning the design of Lumentum’s products and  
20 related technologies;
- 21 iii. Documents and tangible things concerning the design of nLIGHT’s products and  
22 related technologies;
- 23 iv. Documents and tangible things concerning the research and development of  
24 Lumentum’s products and related technologies;
- 25 v. Documents and tangible things concerning the research and development of  
26 nLIGHT’s products and related technologies;

- 1       vi. Documents and tangible things identifying customers and/or suppliers, current
- 2                   competitive business and strategic plans, and future oriented sales and financial
- 3                   projections, future oriented marketing plans;
- 4       vii. Lab notebooks;
- 5       viii. Agreements concerning licensing of intellectual property, manufacturing, sourcing,
- 6                   and/or product development;
- 7       ix. Documents concerning pending patent applications;
- 8       x. Source selection information and contractor bid and proposal information;
- 9       xi. Settlement agreements;
- 10      xii. Documents and tangible things concerning Lumentum's trade secrets; and
- 11      xiii. Documents and tangible things concerning nLIGHT's trade secrets.

12     4. **SCOPE**

13       The protections conferred by this agreement cover not only Confidential material and  
14      Attorneys' Eyes Only material (as defined above), but also (1) any information copied or extracted  
15      from Confidential and/or Attorneys' Eyes Only material; (2) all copies, excerpts, summaries, or  
16      compilations of Confidential and/or Attorneys' Eyes Only material; and (3) any testimony,  
17      conversations, or presentations by parties or their counsel that might reveal Confidential and/or  
18      Attorneys' Eyes Only material.

19       However, the protections conferred by this agreement do not cover information that is in  
20      the public domain or becomes part of the public domain through trial or otherwise.

21     5. **ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

22     5.1    **Basic Principles.** A receiving party may use Confidential and/or Attorneys' Eyes  
23      Only material that is disclosed or produced by another party or by a non-party in connection with  
24      this case only for prosecuting, defending, or attempting to settle this litigation. Confidential  
25      material may be disclosed only to the categories of persons and under the conditions described in  
26      this agreement. Confidential material must be stored and maintained by a receiving party at a

1 location and in a secure manner that ensures that access is limited to the persons authorized under  
2 this agreement.

3       5.2     Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered  
4 by the court or permitted in writing by the designating party, a receiving party may disclose any  
5 Confidential material only to:

6           (a)     the receiving party’s counsel of record in this action, as well as employees  
7 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

8           (b)     up to five individuals who are officers, directors, or employees (including  
9 in house counsel) of the receiving party and to whom disclosure is reasonably necessary for this  
10 litigation. Lumentum and nLIGHT shall each identify individuals under this Paragraph 5.2(b) by  
11 providing to the designating party the signed “Acknowledgment and Agreement to Be Bound”  
12 (Exhibit A) of an individual who qualifies under this Paragraph 5.2(b), provided that:

13              (i)     prior to disclosure to any such individual, the receiving party  
14 provides written notice to the designating party of the name of the person; the title of the person;  
15 a description of the job responsibilities, and a copy of the person’s signed “Acknowledgment and  
16 Agreement to Be Bound” (Exhibit A); and

17              (ii)    a period of seven days elapses from the date of the written notice  
18 described in Paragraph 5.2(b)(i) without objection from the designating party. If the designating  
19 party objects to disclosure to the identified individual within the seven-day period, the parties shall  
20 first try to resolve the dispute in good faith on an informal basis. If the dispute cannot be resolved,  
21 the objecting party shall have 14 days from the date of the written notice described in Paragraph  
22 5.2(b)(i) to move the Court for an order denying the disputed person access to Confidential and/or  
23 Attorneys’ Eyes Only material. Such motion must be noted for consideration no earlier or later  
24 than the second Friday after filing and service of the motion. The objecting party shall have the  
25 burden of demonstrating that disclosure to the disputed person would expose the objecting party  
26 to the risk of serious harm. Upon the timely making of such a motion, no disclosure of Confidential

1 or Attorneys' Eyes Only material shall be made to the disputed person unless and until the Court  
2 enters an order allowing such disclosure;

3 (c) experts and consultants to whom disclosure is reasonably necessary for this  
4 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A)  
5 provided that:

6 (i) prior to disclosure to any such expert or consultant, the receiving  
7 party provides written notice to the designating party of the name of the person; the present  
8 employer and title of the person; a current curriculum vitae of the person; a list of current and past  
9 consulting relationships the person has undertaken within the last four years; and a copy of the  
10 person's signed "Acknowledgment and Agreement to Be Bound" (Exhibit A); and

11 (ii) a period of seven days elapses from the date of the written notice  
12 described in Paragraph 5.2(c)(i) without objection from the designating party. If the designating  
13 party objects to disclosure to the identified expert or consultant within the seven-day period, the  
14 parties shall first try to resolve the dispute in good faith on an informal basis. If the dispute cannot  
15 be resolved, the objecting party shall have 14 days from the date of the written notice described in  
16 Paragraph 5.2(c)(i) to move the Court for an order denying the disputed person access to  
17 Confidential and/or Attorneys' Eyes Only material. The objecting party shall have the burden of  
18 demonstrating that disclosure to the disputed person would expose the objecting party to the risk  
19 of serious harm. Upon the timely making of such a motion, no disclosure of Confidential or  
20 Attorneys' Eyes Only material shall be made to the disputed person unless and until the Court  
21 enters an order allowing such disclosure;

22 (d) the court, court personnel, and court reporters and their staff;

23 (e) copy or imaging services retained by counsel to assist in the duplication of  
24 confidential material, provided that counsel for the party retaining the copy or imaging service  
25 instructs the service not to disclose any confidential material to third parties and to immediately  
26 return all originals and copies of any confidential material;

13       5.3     Disclosure of “ATTORNEYS’ EYES ONLY” Information or Items. Unless  
14 otherwise ordered by the Court or permitted in writing by the designating party, a receiving party  
15 may disclose any Attorneys’ Eyes Only material only to:

1 a description of the job responsibilities, and a copy of the person's signed "Acknowledgment and  
2 Agreement to Be Bound" (Exhibit A); and

18        5.4     Filing Confidential or Attorneys' Eyes Only Material. Before filing confidential  
19 material or discussing or referencing such material in court filings, the filing party shall confer  
20 with the designating party, in accordance with Local Civil Rule 5(g)(3)(A), to determine whether  
21 the designating party will remove the confidential designation, whether the document can be  
22 redacted, or whether a motion to seal or stipulation and proposed order is warranted. During the  
23 meet and confer process, the designating party must identify the basis for sealing the specific  
24 confidential information at issue, and the filing party shall include this basis in its motion to seal,  
25 along with any objection to sealing the information at issue. Local Civil Rule 5(g) sets forth the  
26 procedures that must be followed and the standards that will be applied when a party seeks

1 permission from the court to file material under seal. A party who seeks to maintain the  
2 confidentiality of its information must satisfy the requirements of Local Civil Rule 5(g)(3)(B),  
3 even if it is not the party filing the motion to seal. Failure to satisfy this requirement will result in  
4 the motion to seal being denied, in accordance with the strong presumption of public access to the  
5 Court's files.

6. **DESIGNATING PROTECTED MATERIAL**

7.1 **Exercise of Restraint and Care in Designating Material for Protection.** Each party  
8 or non-party that designates information or items for protection under this agreement must take  
9 care to limit any such designation to specific material that qualifies under the appropriate  
10 standards. The designating party must designate for protection only those parts of material,  
11 documents, items, or oral or written communications that qualify, so that other portions of the  
12 material, documents, items, or communications for which protection is not warranted are not swept  
13 unjustifiably within the ambit of this agreement.

14 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
15 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to  
16 unnecessarily encumber or delay the case development process or to impose unnecessary expenses  
17 and burdens on other parties) expose the designating party to sanctions.

18 If it comes to a designating party's attention that information or items that it designated for  
19 protection do not qualify for protection, the designating party must promptly notify all other parties  
20 that it is withdrawing the mistaken designation.

21.2 **Manner and Timing of Designations.** Except as otherwise provided in this  
22 agreement (see, *e.g.*, second paragraph of section 6.2(b) below), or as otherwise stipulated or  
23 ordered, disclosure or discovery material that qualifies for protection under this agreement must  
24 be clearly so designated before or when the material is disclosed or produced.

25 (a) **Information in documentary form:** (*e.g.*, paper or electronic documents and  
26 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),

1 the designating party must affix the term “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY”  
2 to each page that contains Confidential or Attorneys’ Eyes Only material. If only a portion or  
3 portions of the material on a page qualifies for protection, the producing party also must clearly  
4 identify the protected portion(s) (e.g., by making appropriate markings in the margins).

5 (b) Testimony given in deposition or in other pretrial proceedings: the parties  
6 and any participating non-parties must identify on the record, during the deposition or other pretrial  
7 proceeding, all protected (Confidential or Attorneys’ Eyes Only) testimony, without prejudice to  
8 their right to so designate other testimony after reviewing the transcript. Any party or non-party  
9 may, within fifteen days after receiving the transcript of the deposition or other pretrial proceeding,  
10 designate portions of the transcript, or exhibits thereto, as Confidential or Attorneys’ Eyes Only.  
11 Unless and until any dispute over such designation is resolved in a manner that removes the  
12 destination, the designated portions of the transcript or exhibits thereto shall be treated as  
13 Confidential or Attorneys’ Eyes Only, as applicable. If a party or non-party desires to protect  
14 confidential information at trial, the issue should be addressed during the pre-trial conference.

15 (c) Other tangible items: the producing party must affix in a prominent place  
16 on the exterior of the container or containers in which the information or item is stored the term  
17 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.” If only a portion or portions of the  
18 information or item warrant protection, the producing party, to the extent practicable, shall identify  
19 the protected portion(s).

20 6.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
21 designate qualified information or items does not, standing alone, waive the designating party’s  
22 right to secure protection under this agreement for such material. Upon timely correction of a  
23 designation, the receiving party must make reasonable efforts to ensure that the material is treated  
24 in accordance with the provisions of this agreement.

1      7.     CHALLENGING CONFIDENTIALITY DESIGNATIONS

2        7.1    Timing of Challenges. Any party or non-party may challenge a designation of  
3 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality  
4 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
5 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to  
6 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
7 original designation is disclosed.

8        7.2    Meet and Confer. The parties must make every attempt to resolve any dispute  
9 regarding confidential designations without court involvement. Any motion regarding confidential  
10 designations or for a protective order must include a certification, in the motion or in a declaration  
11 or affidavit, that the movant has engaged in a good faith meet and confer conference with other  
12 affected parties in an effort to resolve the dispute without court action. The certification must list  
13 the date, manner, and participants to the conference. A good faith effort to confer requires a face-  
14 to-face meeting or a telephone conference.

15       7.3    Judicial Intervention. If the parties cannot resolve a challenge without court  
16 intervention, the designating party may file and serve a motion to retain confidentiality under Local  
17 Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of  
18 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those  
19 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on  
20 other parties) may expose the challenging party to sanctions. All parties shall continue to maintain  
21 the material in question as Confidential or Attorneys' Eyes Only until the court rules on the  
22 challenge.

1       8.     PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
2                   LITIGATION

3               If a party is served with a subpoena or a court order issued in other litigation that compels  
4 disclosure of any information or items designated in this action as "CONFIDENTIAL" or  
5 "ATTORNEYS' EYES' ONLY," that party must:

6               (a)     promptly notify the designating party in writing and include a copy of the  
7 subpoena or court order;

8               (b)     promptly notify in writing the party who caused the subpoena or order to  
9 issue in the other litigation that some or all of the material covered by the subpoena or order is  
10 subject to this agreement. Such notification shall include a copy of this agreement; and

11              (c)     cooperate with respect to all reasonable procedures sought to be pursued by  
12 the designating party whose confidential material may be affected.

13       9.     UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

14               If a receiving party learns that, by inadvertence or otherwise, it has disclosed Confidential  
15 or Attorneys' Eyes Only material to any person or in any circumstance not authorized under this  
16 agreement, the receiving party must immediately (a) notify in writing the designating party of the  
17 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected  
18 material, (c) inform the person or persons to whom unauthorized disclosures were made of all the  
19 terms of this agreement, and (d) request that such person or persons execute the "Acknowledgment  
20 and Agreement to Be Bound" that is attached hereto as Exhibit A.

21       10.    INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
22                   MATERIAL

23               When a producing party gives notice to receiving parties that certain inadvertently  
24 produced material is subject to a claim of privilege or other protection, the obligations of the  
25 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision  
26 is not intended to modify whatever procedure may be established in an e-discovery order or

1 agreement that provides for production without prior privilege review. The parties agree to the  
2 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

3 11. NON TERMINATION AND RETURN OF DOCUMENTS

4 Within 60 days after the termination of this action, including all appeals, each receiving  
5 party must return or destroy all Confidential and Attorneys Eyes' Only material to the producing  
6 party, including all copies, extracts and summaries thereof.

7 Notwithstanding this provision, counsel are entitled to retain one archival copy of all  
8 documents filed with the court; trial, deposition, and hearing transcripts; correspondence;  
9 deposition and trial exhibits; expert reports; attorney work product; and consultant and expert work  
10 product, even if such materials contain Confidential or Attorneys' Eyes Only material.

11 The confidentiality obligations imposed by this agreement shall remain in effect until a  
12 designating party agrees otherwise in writing or a court orders otherwise.

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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 DATED: January 8, 2024

/s/ Joel D. Sayres

3 Attorneys for Plaintiff

4 DATED: January 8, 2024

/s/ Scott A. Fleder

5 Attorneys for Defendant

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7 PURSUANT TO STIPULATION, IT IS SO ORDERED

8 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any  
9 documents, electronically stored information (ESI) or information, whether inadvertent or  
10 otherwise, in this proceeding shall not, for the purposes of this proceeding or any other federal or  
11 state proceeding, constitute a waiver by the producing party of any privilege applicable to those  
12 documents, including the attorney-client privilege, attorney work-product protection, or any other  
13 privilege or protection recognized by law. This Order shall be interpreted to provide the maximum  
14 protection allowed by Fed. R. Evid. 502(d). The provisions of Fed. R. Evid. 502(b) do not apply.  
15 Nothing contained herein is intended to or shall serve to limit a party's right to conduct a review  
16 of documents, ESI or information (including metadata) for relevance, responsiveness and/or  
17 segregation of privileged and/or protected information before production. Information produced  
18 in discovery that is protected as privileged or work product shall be immediately returned to the  
19 producing party.

20 DATED this 9th day of January, 2024.

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22  
23 BENJAMIN H. SETTLE  
United States District Judge  
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EXHIBIT A

## ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Western District of Washington on [date] in the case of *Lumentum Operations LLC v. nLIGHT, Inc., et al.*, No. 3:22-CV-05186-BHS (W.D. Wash.). I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for the  
14 Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective  
15 Order, even if such enforcement proceedings occur after termination of this action.

16 || Date:

17 || City and State where sworn and signed:

18 || Printed name:

19 || Signature: